

NHH-CV22-5005353 : **SUPERIOR COURT/
HOUSING SESSION**

JUANA VALLE : **J.D. OF NEW HAVEN**

v. : **AT NEW HAVEN**

CITY OF NEW HAVEN
FAIR RENT COMMISSION : **AUGUST 19, 2022**

PLAINTIFF'S PRELIMINARY APPELLATE BRIEF¹

I. INTRODUCTION

The present appeal challenges a City of New Haven Fair Rent Commission (“Fair Rent Commission”) decision to dismiss a Retaliation Complaint brought by Ms. Juana Valle against her landlord. Ms. Valle, a tenant, sought to challenge the summary process action which her landlord filed in retaliation for her filing a Fair Rent Complaint to challenge an increase in rent and a reduction in services. The Fair Rent Commission dismissed the Retaliation Complaint for lack of jurisdiction, stating that it had no jurisdiction over a Retaliation Complaint when there is a pending summary process eviction. Not only does the Fair Rent Commission have jurisdiction over Ms. Valle’s Fair Rent Complaint, as set forth in the state and city laws that empower the Fair Rent Commission, but such jurisdiction is essential to the very purpose of the Fair Rent Commission. As such, Ms. Valle respectfully request that this Court overturn the dismissal and remand her Retaliation Complaint back to the Fair Rent Commission for a decision on the merits.

¹ Appellant hereby files a preliminary brief to be in compliance with the scheduling order, in conjunction with a Motion for Modification of such scheduling order which sets forth that a final brief can not be filed without the Fair Rent Commission’s return of the record, needed for review and citation purposes.

II. FACTUAL BACKGROUND

A. UNDERLYING FACTS

On July 2, 2021, Juana Valle filed a Fair Rent Complaint against her landlord Silverio Lucero with the City of New Haven Fair Rent Commission, pursuant to Conn. Gen. Stat. § 7-148b (attached as Exhibit A) and New Haven Code of Ordinances Chapt. 12 $\frac{3}{4}$ -4(2) (attached as Exhibit B), objecting to an unfair rent increase and reduction in the services being provided to her as a tenant. See Exhibit C. On July 27, 2021, the Fair Rent Commission sent a Notice of Complaint to Mr. Lucero, prohibiting any adverse actions, including initiation of any eviction proceeding or reducing services available to Ms. Valle, while the Fair Rent Complaint was pending. See Exhibit D.

In direct violation of such order, on or about September 30, 2021, Mr. Silverio initiated an eviction against Ms. Valle by serving her with a Notice to Quit. See Exhibit E. In order to uphold her rights under the fair rent process, Ms. Valle filed a Retaliation Complaint with the Fair Rent Commission on May 16, 2022, under Conn. Gen. Stat. § 7-148d(b) and New Haven Code Chapt. 12 $\frac{3}{4}$ -10(b), setting forth that the eviction was brought in direct violation of an order of the Fair Rent Commission. See Exhibit F. Ms. Valle sought an order from the Fair Rent Commission to the landlord to cease the eviction and fines for any failure to comply with such cease and desist order. The Fair Rent Commission scheduled the Retaliation Complaint for a hearing on May 17, 2022.

On May 17, 2022, Assistant Corporation Counsel Blake Sullivan sent an email to counsel for Ms. Valle and the landlord stating the he “believe[d] the Fair Rent Commission may be without jurisdiction to hear Ms. Valle’s complaint with the summary process action set for trial.” See Exhibit G. He instructed counsel to “be prepared to discuss the legal basis for the commission’s jurisdiction, particularly in light of the prior action pending doctrine and

Judge Beach’s decision in *Mrosek v. MacPherson*, 1997 WL 166281 (1997).” *Id.* The Fair Rent Commission heard argument that evening from counsel for both parties. After such argument, Assistant Corporation Counsel Sullivan recommended to the Board of Commissioners that the Fair Rent Commission dismiss Ms. Valle’s Retaliation Complaint, given that there was a pending summary process action. The Fair Rent Commission then voted to dismiss Ms. Valle’s Retaliation Complaint for lack of jurisdiction. On May 20, 2022, the Commission issued a Notice of Finding which reiterated the Board of Commissioners unanimous vote to dismiss the Retaliation Complaint given the recommendation by Assistant Corporation Counsel Sullivan and finding a lack of jurisdiction on account of the pending summary process action. See Exhibit H.

B. PROCEDURAL HISTORY

On May 26, 2022, Ms. Valle filed the present appeal to challenge the dismissal of her Retaliation Complaint. The appeal was commenced by way of a Writ, Summons, and Complaint dated May 26, 2022 and served on Fair Rent Commission on May 26, 2022.

III. ARGUMENT

A. STANDARD OF REVIEW

Ms. Valle has brought this appeal for judicial review of the Fair Rent Commission’s decision to dismiss her Retaliation Complaint on the grounds that such decision violated her rights under the plain language of both state and city law and created a precedent that undermines the existential purpose of the Fair Rent Commission. “Any person aggrieved by any order of the commission may appeal to the superior court for the judicial district in which

the town, city or borough is located.” Conn. Gen. Stat. § 7-148e. Furthermore, Section 12-12³/₄ -7(f) of the New Haven Municipal Code provides in relevant part: “[a]ny person aggrieved by any decision of the Commission may appeal to the State of Connecticut Superior Court Housing Session for the Judicial District of New Haven . . . such appeal to be taken within ten (10) days after the rendering of the decision in question.” When presented with a fair rent appeal, the Court is “to determine whether the Fair Rent Commission acted arbitrarily without sufficient evidence or failed to carry out its function properly as delineated in the statutes.” See Gregory Hall Apartments v. Flicker, 1983 WL 187590 at 1 (Driscoll, J.) (attached as Exhibit I); see also Soundview Property Renewal v. Fair Rent Commission of the City of New Haven, 2010 WL 2397031 at 1 (Abrams, J.)(citing Robinson v. Unemployment Security Board of Review, 181 Conn. 1, 5 (1980)(attached as Exhibit J). For the reasons set forth below, this Court should find that by dismissing a retaliation claim that was based on a landlord violating a direct order of the Fair Rent Commission, the Fair Rent Commission acted unreasonably, arbitrarily, and in a way that “failed to carry out its function.” Gregory Hall Apartments, 1983 WL 187590 at *1.

B. MS. VALLE HAD A CLEAR RIGHT UNDER CONN. GEN. STAT. SEC. 7-148d(b) AND NEW HAVEN ORDINANCE CHAPT. 12³/₄-10 TO HAVE HER RETALIATION COMPLAINT HEARD AND HER REQUEST FOR A CEASE AND DESIST ORDER ADJUDICATED

The plain language and the legislative history of both the state statute that empowers a the City of New Haven to have a fair rent commission and the New Haven Code of Ordinances that establish such a commission in New Haven are crystal clear that the Fair Rent Commission has jurisdiction to adjudicate a retaliation complaint, issue a cease and desist order against a landlord who has filed an eviction in retaliation for the tenant filing a fair rent complaint, and

issue fines against a landlord for such retaliation. Conn. Gen. Stat. § 7-148b empowers cities to establish fair rent commissions to receive complaints and hold hearings regarding excessive rental charges. Section 7-148d(b) further sets forth that a tenant may file a retaliation complaint if “a landlord has retaliated in any manner against a tenant because the tenant has complained to the commission” and that the commission is to hold a “hearing” on such matter and has the power to “order the landlord to cease and desist from such conduct.” The retaliation complaint section dovetails with a penalty provision which states that a landlord who is found to have violated the anti-retaliation mandate shall be fined between \$25 and \$100 for each offense and that an offense which continues for more than five days shall constitute a new offense. *See* Conn. Gen. Stat. § 7-148f. These state law provisions establishing jurisdiction over and penalties for fair rent retaliation are separate and distinct from Conn. Gen. Stat. § 47a-20, which codifies retaliation as a special defense in a summary process action. There is nothing in either the state fair rent law nor the summary process law that allows a retaliatory summary process case to take precedence over a retaliation complaint on the ground that there is a pending summary process action.

The plain language of the New Haven Code of Ordinances is similarly clear that when a landlord retaliates with an eviction against a tenant who has filed a fair rent complaint that the tenant may file either a retaliation complaint with the fair rent commission, a summary process retaliation defense in state housing court, or both. New Haven Code of Ordinances Chapt. 12¾ - 10, entitled “Retaliatory eviction,” sets forth two options for a tenant:

(a) In any action for summary process, it shall be an affirmative defense pursuant to Connecticut Public Act 315 of the 1969 General Assembly that the plaintiff brought such action against the tenant solely because of a complaint which was filed with the commission or because the tenant or complainant has taken any other action with reference to the matter covered by this chapter.

(b) Pursuant to Public Act 83-425 of the Connecticut General Assembly, any tenant who claims that the action of his or her landlord constitutes retaliatory eviction may file a notice of said claim with the fair rent commission.

Not only do both state and city law have separate and distinct statutory provisions for administrative retaliation complaints to be adjudicated by the fair rent commissions and summary process retaliation defenses to be adjudicated in state housing court, as explained above, but the legislative history of both the state and city law provisions further proves that an administrative retaliation claim is in no way subordinate to nor precluded by a pending summary process action. Enacted in 1969, the original state fair rent commission act (Connecticut Public Act 69-315) controlled retaliation by a landlord against a tenant for filing a fair rent complaint with a provision entitled “retaliatory evictions” which stated that a tenant may raise retaliation as an affirmative defense to any summary process brought against the tenant solely because the tenant filed a fair rent complaint with a fair rent commission.² This state statutory section on retaliatory evictions was expanded in 1983, pursuant to Public Act 83-425, to include a second option for a tenant against whom a landlord has filed a retaliatory eviction – that the tenant could also file an administrative retaliation complaint to be adjudicated at a hearing with a fair rent commission empowered to issue an order to the landlord to cease and desist the retaliation.³ The addition of this provision made clear that a tenant had a second option beyond just raising a retaliation defense in housing court in the summary process action – that the tenant

² P.A. 69-315: “In any action for summary process . . . it shall be an affirmative defense that the plaintiff brought such action solely because the defendant attempted to remedy, by lawful means, including contacting officials of the state or of any town, city, borough or public agency, any condition constituting a violation of any of . . . the housing or health ordinances of the municipality where the premises which are the subject of the complaint lie.” Exhibit K.

³ P.A. 83-425: “If the commission determines, after a hearing, that a landlord has retaliated in any manner against a tenant because the tenant has complained to the commission, the commission may order the landlord to cease and desist from such conduct.” Exhibit L.

could also file an administrative retaliation complaint to the fair rent commission and that the commission had jurisdiction to order the landlord to cease and desist from maintaining the eviction.

The evolution of the New Haven Code parallels this state legislative history. Using the power given to it from the State, the City of New Haven created a Fair Rent Commission in December 1969. See New Haven Code of Ordinance, Board of Aldermen Legislation (Dec. 1, 1969)(“Concerning the Establishment of a Fair Rent Commission for the City of New Haven”) at 843 (attached as Exhibit K). This first city law governing the Fair Rent Commission contained a retaliatory eviction section setting forth fair rent retaliation as a special defense in summary process. See id., Section 10 at 851.⁴ This city code was expanded to its present form in 1983 to include a second option for a tenant – to file a notice of a claim that the action of his or her landlord constitutes retaliatory action with the Fair Rent Commission.⁵ See New Haven Code of Ordinances Chapt. 12 $\frac{3}{4}$ -10(b)(Ord. of 12-13-84). Such retaliatory action was defined to include a landlord “bring[ing] an action or proceeding against the tenant to recover possession of the dwelling unit.” The new city law also contained a whole new section setting forth the procedures for filing a retaliation claim. Chapter 12 $\frac{3}{4}$ -11 sets forth that upon “receipt of notice of a claim of retaliatory action,” the commission “shall investigate the claim,” “convene a hearing,” and could issue a “cease and desist order . . . [t]hat the landlord maintain no action against the tenant to recover possession of the dwelling unit.” Through this provision, the city

⁴ Section 10. Retaliatory Eviction. “In any action for summary process, it shall be an affirmative defense pursuant to Connecticut Public Act 315 of the 1969 General Assembly that the plaintiff brought such action against the tenant solely because of a complaint which was filed with the Commission or because the tenant or complainant has taken any other action with reference to the matter covered by this ordinance.” Exhibit M.

⁵ “Pursuant to Public Action 83-425 of the Connecticut General Assembly, any tenant who claims that the act of his or her landlord constitutes retaliatory action may file a notice of said claim with the fair rent commission.” New Haven Ordinances Chapter 12 $\frac{3}{4}$ -10(b), attached as Exhibit B.

gave full life to its new powers under the state fair housing act retaliation claim provision. As such, both the plain language and the legislative history make crystal clear that a tenant may file a retaliation complaint for a landlord who commences an eviction after the filing of a fair rent complaint and that the fair rent commission has jurisdiction, pursuant to both state and city law, over such complaint. To hold that the fair rent commission lacks jurisdiction to hear an administrative retaliation complaint when there is a pending eviction eviscerates the plain language of the state statute and city ordinance and ignores the legislative histories – which sets forth retaliation complaints as the right of a tenant as a means to stop a retaliatory eviction, not just to be able to raise retaliation as a judicial special defense in housing court.

C. MROSEK V. MACPHERSON DOES NOT HOLD THAT A FAIR RENT COMMISSION DOES NOT HAVE JURISDICTION OVER A RETALIATION COMPLAINT WHEN THERE IS A PENDING SUMMARY PROCESS ACTION

At the hearing on Ms. Valle's retaliation complaint, Assistant Corporation Counsel Sullivan advised the Fair Rent Commission that it lacked jurisdiction based on Judge Beach's decision in Mrosek v. MacPherson, 1997 WL 166281 (Beach, J.) (attached at Exhibit N), and the judicial doctrine of prior action pending. The reliance on the Mrosek decision is indisputably misplaced. The Mrosek decision not only does not hold that a fair rent commission lacks jurisdiction over a retaliation complaint when a summary process action is pending and, in fact, contains a clear and persuasive favorable discussion of such jurisdiction.

The Mrosek decision involves a tenant's request that a fair rent commission issue an order to a housing court to stay a pending summary process action because the tenants had a previously filed fair rent complaint. Id. at *1. Judge Beach held that a municipal administrative agency does not have the power to stay a pending superior court case. Id. Judge Beach

explained that summary process, not a municipal agency's discretion, governs the jurisdiction of the superior court and explained that the legal standard for retaliation is different in summary process and administrative law. Id. at *2.

In contrast, Ms. Valle made no request of the administrative agency to issue an order to a state court; rather, she requested that the Fair Rent Commission issue its own cease and desist order and levy fines against the landlord for any noncompliance, as allowed in the empowering state and city law as discussed above. Ms. Valle was asking the Fair Rent Commission to order the landlord to cease and desist from his retaliatory eviction, not asking the Fair Rent Commission to order the state court to do anything. The Fair Rent Commission's jurisdiction to do so was explicitly endorsed by Judge Beach when he informed the tenant in the Mrosek case that the commission could not stay the housing court but that a fair rent commission could utilize the "independent method [which] exists to enforce findings of retaliation made by the commission." Id. at *2. Such independent method is an order from a fair rent commission to a landlord to cease and desist from maintaining the eviction (i.e., withdraw the eviction or take no further action in the eviction) and to fine the landlord for any noncompliance with such order as the commission is empowered to do pursuant to the state law statutory powers set forth in Conn. Gen. Stat. § 7-148f. See Mrosek at *2 ("If a commission makes a finding of retaliation which is ultimately upheld and enforced, an enforcement method independent of summary process is available. See § 7-148f of the General Statutes.").

D. THE DOCTRINE OF PRIOR ACTION PENDING HAS NO RELEVANCE TO THE QUESTION OF THE JURISDICTION OF THE FAIR RENT COMMISSION OVER MS. VALLE'S RETALIATION COMPLAINT

Moreover, contrary to the suggestion of Assistant Corporation Counsel Sullivan, the prior

pending action argument is inapposite here. “[T]he prior pending action doctrine permits the court to dismiss a second case that raises issues currently pending before the court. The pendency of a prior suit of the same character, between the same parties, brought to obtain the same end or object, is, at common law, good cause for abatement. It is so, because there cannot be any reason or necessity for bringing the second, and, therefore, it must be oppressive and vexatious. This is a rule of justice and equity, generally applicable, and always, where the two suits are virtually alike, and in the same jurisdiction” See Selimoglu v. Phimvongsa, 119 Conn. App. 645, 649 (2010) (quoting Cumberland Farms, Inc. v. Groton, 247 Conn. 196, 216 (1998)). In the present matter, the landlord’s summary process eviction and the tenant’s retaliation complaint are by no means duplicative and seeking the same end. The summary process action seeks possession of the premises under state eviction statutes; the retaliation complaint seeks a cease and desist order and fines for violation of state and city fair rent law. Although there is overlap in the facts that would be presented on a retaliation defense in the summary process action and the case in chief in the retaliation complaint, these facts would be raised at different procedural postures in each case, for distinct purposes, and seeking disparate remedies. The remedy available at the Fair Rent Commission – monetary damages – is not even available in summary process. To utilize the prior pending action doctrine here to bar the tenant’s retaliation complaint is equivalent to a ruling by a small claims court it has no jurisdiction over an action in small claims court for back rent just because a landlord has a summary process action pending. Such determination would be absurd.

E. THE MISSION AND PROPER FUNCTIONING OF THE FAIR RENT COMMISSION NECESSITATES JURISDICTION

The Fair Rent Commission must have jurisdiction over retaliation claims such as the one at issue here in order to fulfill its mission and function properly. The Fair Rent Commission

exists to adjudicate rent disputes. When a tenant files a fair rent complaint, the Commission orders the landlord to not start an eviction – in order to prevent a landlord from punishing the tenant for filing a claim – and provides a remedy for a violation of such prohibition (i.e., an order to the landlord to cease and desist the eviction, with fines for violation of such order). The Fair Rent Commission’s decision to decline jurisdiction over a retaliation complaint when a summary process action is filed charts a road map to all landlords for how to avoid the fair rent process – upon a tenant’s filing of a fair rent complaint and a fair rent commission sending out a notice to the landlord to not commence an eviction, the landlord should file an eviction in direct violation of the fair rent commission’s order not to commence an eviction and evict the tenant in retaliation for filing the fair rent complaint. This strips a fair rent commission of its powers, turning an order of a municipal agency into a voluntary request and causing a chilling effect on tenant use of such commissions, fearing that the filing of a fair rent complaint will prompt a retaliatory eviction and knowing that the commission is powerless stop such retaliatory evictions.

Given that she had legal aid representation in her eviction, Ms. Valle was well aware of her right to file a retaliation defense, and she indeed raised such defense in the then pending eviction.⁶ But, this summary process retaliation defense is not an adequate avenue of recourse for a landlord’s retaliation in violation of Fair Rent Commission orders. First, such the summary process retaliation defense does not vindicate the violation of the agency order. Second, the defense does not allow an immediate cease and desist order but rather requires an affirmative defense to be adjudicated at the trial stage of the summary process action, after the tenant has had

⁶ Vitale v. Savain, NHH-CV21-6014347, was withdrawn on July 15, 2022. It should also be noted that Ms. Valle moved the present Court to dismiss the pending eviction based on the retaliation claim but received a judicial ruling that retaliation was to be raised as a special defense as opposed to a jurisdictional defect of the superior court. (Entry 103.00).

to endure the time, expense, and stress of the eviction -- not to mention the significant deleterious effects of having a pending eviction on his or her record.⁷ Third, the fair rent law allows for fines, which are not available in summary process, to be levied against the landlord for violation of the fair rent order and which should be available to tenants as a remedy for retaliatory evictions.

IV. CONCLUSION

For the above reasons, Appellant Juana Valle respectfully requests that the Court overturn the dismissal of her Retaliation Complaint by the Fair Rent Commission, issue a ruling that the Fair Rent Commission has jurisdiction over the Retaliation Complaint, and order the Fair Rent Commission to adjudicate the Retaliation Complaint.

**JUANA VALLE,
APPELLANT**

By: /s/419776
Amy D. Marx
Her Attorney
New Haven Legal Assistance Assoc.
205 Orange Street
New Haven, CT 06510
Juris No. 419776
Tel: (203) 946-4811

⁷ See U.S. Department of Housing and Urban Development, Office of Policy Development and Research, "Prevalence and Impacts of Eviction,," Evidence Matters (Summer 2021) <https://www.huduser.gov/portal/periodicals/em/Summer21/highlight2.html>

CERTIFICATION

I hereby certify that a copy of the foregoing Appellate Brief was emailed and mailed on August 19, 2022 to:

Blake Sullivan, Assistant Corporation Counsel
Office of Corporation Counsel
City of New Haven
165 Church Street – 4th Floor
New Haven, CT 06510
btsullivan@newhavenct.gov

/s/419776
Amy D. Marx

EXHIBIT A

Deposit of compilation of town ordinances in county bar library is directive and failure to do so does not invalidate such ordinances. 29 CS 59.

[\(Return to Chapter Table of Contents\)](#) [\(Return to List of Chapters\)](#) [\(Return to List of Titles\)](#)

Sec. 7-148b. Creation of fair rent commission. Powers. (a) For purposes of this section and sections 7-148c to 7-148f, inclusive, “seasonal basis” means housing accommodations rented for a period or periods aggregating not more than one hundred twenty days in any one calendar year and “rental charge” includes any fee or charge in addition to rent that is imposed or sought to be imposed upon a tenant by a landlord.

(b) Except as provided in subsection (c) of this section, any town, city or borough may, through its legislative body, create a fair rent commission to make studies and investigations, conduct hearings and receive complaints relative to rental charges on housing accommodations, except those accommodations rented on a seasonal basis, within its jurisdiction, which term shall include mobile manufactured homes and mobile manufactured home park lots, in order to control and eliminate excessive rental charges on such accommodations, and to carry out the provisions of sections 7-148b to 7-148f, inclusive, section 47a-20 and subsection (b) of section 47a-23c. The commission, for such purposes, may compel the attendance of persons at hearings, issue subpoenas and administer oaths, issue orders and continue, review, amend, terminate or suspend any of its orders and decisions. The commission may be empowered to retain legal counsel to advise it.

(c) Any town, city or borough in which the number of renter-occupied dwelling units is greater than five thousand, as determined by the most recent decennial census, and which does not have a fair rent commission on October 1, 1989, shall, on or before June 1, 1990, conduct a public hearing or public hearings and decide by majority vote of its legislative body whether to create a fair rent commission as provided in subsection (a) of this section. Any such town, city or borough which fails to act pursuant to the requirements of this subsection shall, not later than June 1, 1991, create such fair rent commission.

(d) Any two or more towns, cities or boroughs not subject to the requirements of subsection (c) of this section may, through their legislative bodies, create a joint fair rent commission.

(1969, P.A. 274, S. 1; 1971, P.A. 478, S. 1; 1972, P.A. 160, S. 1; P.A. 81-472, S. 101, 159; P.A. 82-356, S. 8, 14; June Sp. Sess. P.A. 83-3, S. 1; P.A. 89-289; P.A. 05-288, S. 40; P.A. 13-36, S. 1.)

History: 1971 act specified applicability to housing accommodations rather than “property”, including mobile homes and lots and excluding seasonal accommodations which were defined in new Subsec. (b); 1972 act added power to carry out provisions of Secs. 7-148b to 7-148e, to issue, amend, terminate, etc. orders and to retain legal counsel; P.A. 81-472 substituted reference to Sec. 47a-20 for reference to Sec. 19-375a, reflecting section's transfer; P.A. 82-356 amended Subsec. (a) to authorize a fair rent commission to carry out the provisions of Sec. 47a-23c(b); June Sp. Sess. P.A. 83-3 changed terms “mobile home” and “mobile manufactured homes” to “mobile manufactured home” and “mobile manufactured homes”; P.A. 89-289 added Subsec. (c) re creation of fair rent commissions in municipalities having more than 5,000 renter-occupied dwelling units and added Subsec. (d) re creation of joint fair rent commissions; P.A. 05-288 made a technical change in Subsecs. (a), (b) and (d), effective July 13, 2005; P.A. 13-36 added new Subsec. (a) defining “seasonal basis” and “rental charge” for purposes of section and Secs. 7-148c to 7-148f, redesignated existing Subsec. (a) as Subsec. (b) and deleted former Subsec. (b) re definition of “seasonal basis”.

[\(Return to Chapter](#) [\(Return to](#) [\(Return to](#)
[Table of Contents\)](#) [List of Chapters\)](#) [List of Titles\)](#)

Sec. 7-148c. Considerations in determining rental charge to be excessive. In determining whether a rental charge or a proposed increase in a rental charge is so excessive, with due regard to all the circumstances, as to be harsh and unconscionable, a fair rent commission shall consider such of the following circumstances as are applicable to the type of accommodation: (1) The rents charged for the same number of rooms in other housing accommodations in the same and in other areas of the municipality; (2) the sanitary conditions existing in the housing accommodations in question; (3) the number of bathtubs or showers, flush water closets, kitchen sinks and lavatory basins available to the occupants thereof; (4) services, furniture, furnishings and equipment supplied therein; (5) the size and number of bedrooms contained therein; (6) repairs necessary to make such accommodations reasonably livable for the occupants accommodated therein; (7) the amount of taxes and overhead expenses, including debt service, thereof; (8) whether the accommodations are in compliance with the ordinances of the municipality and the general statutes relating to health and safety; (9) the income of the petitioner and the availability of accommodations; (10) the availability of utilities; (11) damages done to the premises by the tenant, caused by other than ordinary wear and tear; (12) the amount and frequency of increases in rental charges; (13) whether, and the extent to which, the income from an increase in rental charges has been or will be reinvested in improvements to the accommodations.

(1969, P.A. 274, S. 2; 1971, P.A. 478, S. 2; 1972, P.A. 160, S. 2; P.A. 82-356, S. 9, 14; P.A. 83-25.)

History: 1971 act added availability of utilities in considerations concerning rental charges; 1972 act included consideration of damage caused by tenant exclusive of ordinary wear and tear; P.A. 82-356 allowed a commission to determine if “a proposed increase in a rental charge” is excessive and added Subdivs. (12) and (13) as additional criteria for a commission to consider; P.A. 83-25 amended Subdiv. (7) by adding the words “including debt service”.

[\(Return to Chapter](#) [\(Return to](#) [\(Return to](#)
[Table of Contents\)](#) [List of Chapters\)](#) [List of Titles\)](#)

Sec. 7-148d. Order for limitation on amount of rent. Suspension of rent payments. Cease and desist orders for retaliatory actions. (a) If a commission determines, after a hearing, that the rental charge or proposed increase in the rental charge for any housing accommodation is so excessive, based on the standards and criteria set forth in section 7-148c, as to be harsh and unconscionable, it may order that the rent be limited to such an amount as it determines to be fair and equitable. If a commission determines, after a hearing, that the housing accommodation in question fails to comply with any municipal ordinance or state statute or regulation relating to health and safety, it may order the suspension of further payment of rent by the tenant until such time as the landlord makes the necessary changes, repairs or installations so as to bring such housing accommodation into compliance with such ordinance, statute or regulation. The rent during said period shall be paid to the commission to be held in escrow subject to ordinances or provisions adopted by the town, city or borough.

(b) If the commission determines, after a hearing, that a landlord has retaliated in any manner against a tenant because the tenant has complained to the commission, the commission may order the landlord to cease and desist from such conduct.

(1969, P.A. 274, S. 3; P.A. 82-356, S. 10, 14; P.A. 83-425.)

History: P.A. 82-356 reflected the change that a commission may examine a rental charge or “proposed increase in a rental charge” and replaced the authorization to order “a reduction in” rent with authorization to order that the rent “be limited” to a fair and equitable amount; P.A. 83-425 added Subsec. (b) concerning issuance of cease and desist orders for retaliatory actions.

[\(Return to Chapter Table of Contents\)](#) [\(Return to List of Chapters\)](#) [\(Return to List of Titles\)](#)

Sec. 7-148e. Appeal. Any person aggrieved by any order of the commission may appeal to the superior court for the judicial district in which the town, city or borough is located. Any such appeal shall be considered a privileged matter with respect to the order of trial.

(1969, P.A. 274, S. 4; P.A. 76-436, S. 283, 681; P.A. 78-280, S. 1, 127.)

History: P.A. 76-436 substituted superior court for court of common pleas and added reference to judicial district, effective July 1, 1978; P.A. 78-280 deleted reference to county.

[\(Return to Chapter Table of Contents\)](#) [\(Return to List of Chapters\)](#) [\(Return to List of Titles\)](#)

Sec. 7-148f. Penalty for violations. Any person who violates any order of rent reduction or rent suspension by demanding, accepting or receiving an amount in excess thereof while such order remains in effect, and no appeal pursuant to section 7-148e is pending, or violates any other provision of sections 7-148b to 7-148e, inclusive, and section 47a-20, or who refuses to obey any subpoena, order or decision of a commission pursuant thereto, shall be fined not less than twenty-five dollars nor more than one hundred dollars for each offense. If such offense continues for more than five days, it shall constitute a new offense for each day it continues to exist thereafter.

(1972, P.A. 160, S. 3; P.A. 74-183, S. 176, 291; P.A. 76-436, S. 156, 681.)

History: P.A. 74-183 substituted court of common pleas for circuit court; P.A. 76-436 deleted provision giving jurisdiction to court of common pleas, effective July 1, 1978.

[\(Return to Chapter Table of Contents\)](#) [\(Return to List of Chapters\)](#) [\(Return to List of Titles\)](#)

Sec. 7-148g. Fair housing commission; creation and powers. Any town, city or borough may, through its legislative body, create a fair housing commission to make studies and receive complaints relative to discrimination in dwellings within its jurisdiction, which term shall include mobile manufactured homes and mobile manufactured home park lots, in order to control and eliminate discrimination in such dwellings, and to enforce fair housing ordinances adopted pursuant to section 7-148 or section 7-194. The commission may be empowered to retain legal counsel to advise it.

(P.A. 79-531, S. 3; June Sp. Sess. P.A. 83-3, S. 1; P.A. 92-257, S. 6.)

History: June Sp. Sess. P.A. 83-3 changed terms “mobile home” and “mobile homes” to “mobile manufactured home” and “mobile manufactured homes”; P.A. 92-257 substituted “dwellings” for “housing accommodations”.

EXHIBIT B

Chapter 12¾ - FAIR RENT PRACTICES

*Footnotes:**--- (1) ---*

Editor's note— An ordinance adopted Dec. 13, 1984, provided that former Ch. 12¾, fair rent practices, §§ 12¾-1—12¾-10, be deleted, and that new provisions be set out in lieu thereof to read as set forth in §§ 12¾-1—12¾-11. Formerly, Ch. 12¾ was derived from ordinances adopted on the following dates: Dec. 23, 1969, §§ 1—9; Dec. 7, 1970, §§ 1—10; July 6, 1981, § 17. Ch. 12¾ was not affected by the selected chapter review and re-enactment project begun in 2006 and derives unchanged from the Code of 1962, reprinted in 1985, as amended.

Cross reference— Commission on equal opportunities, § 12½-3 et seq.; rent discrimination against families or single parents with children, § 12½-41 et seq.; housing code, Title V.

Sec. 12¾-1. - Purpose.

Pursuant to and in conformity with Public Act No. 274 of the 1969 General Assembly, there is hereby created a commission known as the fair rent commission for the purpose of controlling and eliminating excessive rental charges on residential property within the City of New Haven. This chapter is enacted in recognition of the compelling need for rent stabilization for the duration of a severe housing shortage in New Haven.

(Ord. of 12-13-84)

Sec. 12¾-2. - Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

Commission shall mean the fair rent commission of the City of New Haven, Connecticut.

Housing accommodation shall mean any building or structure, wholly or in part, containing living quarters occupied or fairly intended for occupancy as a place of residence, with any land or buildings appurtenant thereto and any services, furniture and facilities supplied in connection therewith except: A hospital, convent, monastery, asylum, public institution or college or school dormitory or any such accommodation which is operated or used exclusively for charitable or educational purposes.

Landlord shall mean any person who leases, subleases, rents, permits or suffers the occupancy of any housing accommodation, including a person who manages a housing accommodation owned by someone else.

Person shall mean any individual, firm, company, association, corporation or group.

Rent or rental charges shall mean any consideration, monetary or otherwise, including any bonus, benefit, or gratuity, demanded or received for the use or occupancy of any housing accommodation.

Tenant shall mean any person who leases or rents, whether by written or oral lease who in any other legal may occupies any housing accommodation, as a residence for himself and/or his immediate family.

(Ord. of 12-13-84)

Sec. 12³/₄-2.1. - Commission—membership and term of office.

The commission shall consist of nine (9) members, all of whom shall be residents of the City of New Haven. At least five (5) members of the commission shall be residential tenants at the time of appointment. The members shall be appointed by the mayor for a term of three (3) years and approved by the board of aldermen. The mayor shall appoint a chairman and vice-chairman. Each member shall serve for the term for which he is appointed and qualified. A member may be reappointed at the expiration of his term.

(Ord. of 12-13-84)

Sec. 12³/₄-3. - Same—Staff.

The commission shall employ an executive director and legal counsel to keep its records, to handle its correspondence, to supervise and direct the investigations, negotiations, and administration of this chapter and generally to perform such other functions as may be assigned by the commission. However, the inspection services related to the work of the fair rent commission may also be provided by the staff of the office of building inspection and enforcement. The commission may employ such additional employees as it deems necessary. Upon request, assistance from other municipal agencies shall be reasonably available to the commission.

(Ord. of 12-13-84)

Sec. 12³/₄-4. - Powers of commission.

The commission shall have the following powers:

(1)

To make studies and investigations into rentals charged for housing accommodations within the City of New Haven as it deems appropriate to carry out its responsibilities hereunder.

- (2) To receive complaints, inquiries, and other communications concerning alleged excessive rental charges in housing accommodations within said city.
- (3) To conduct hearings, either on its own motion or on complaints or requests for investigation submitted to it by any interested person.
- (4) To administer oaths.
- (5) To subpoena witnesses and compel their attendance at said hearings and to compel production of any books and documents relating to any matter under investigation or question.
- (6) To determine, after a hearing, whether or not the rent for any housing accommodation is so excessive based on the standards and criteria of this chapter, as to be harsh and unconscionable.
- (7) To order a reduction of any excessive rent to an amount the commission considers fair and equitable retroactive to the date of filing of the complaint. Such order shall be effective for one (1) year from its date, except as provided under subsection (9) of this section, or if the commission shall, pursuant to a subsequent petition by the landlord or the tenant order that the rent be changed.
- (8) To determine, after a hearing, whether or not a housing accommodation fails to comply with state statutes, municipal ordinances and regulations relating to health and safety.
- (9) To order the suspension of further payment of rent by the tenant to the landlord and order the deposit of said rent in an escrow account to be administered by the commission, as hereinafter described, until such time as the landlord makes necessary changes, repairs, alterations or installations so as to bring the housing accommodation into compliance with state statutes, municipal ordinances or regulations relating to health and safety, if the commission finds that the housing accommodation in question fails to comply with said statutes, ordinances or regulations.
- (10)

To refer, in those instances which it deems appropriate, those housing accommodations which fail to comply with state statutes, municipal ordinances or regulations relating to health and safety to the appropriate enforcement agency or office of the state or local government.

- (11) To do all things now or hereinafter authorized by Public Act 274 of the 1969 General Assembly or Public Act 83-425 as the same now read(s) or may be amended from time to time.
- (12) To adopt rules and regulations for the carrying on of its functions, including rules and regulations for the conduct of its hearings.
- (13) To continue, review, modify, terminate or suspend all its orders and decisions.
- (14) To attempt, through the process of informal conciliation and negotiation between a complaining tenant and a landlord, to arrive at a rental agreement which is mutually acceptable to said tenant and landlord before initiating the formal hearing process.
- (15) To deposit into the escrow account rent paid to the commission by tenants whose landlord has refused to accept the rent after a tenant has filed a complaint or claim of retaliation. Said rent shall be withdrawn from the escrow account and paid to the landlord upon written request from the landlord.

(Ord. of 12-13-84)

Sec. 12³/₄-5. - Complaints concerning unfair practices.

- (a) The commission shall prepare and make available complaint forms for use by persons desiring to file complaints. The complaint forms shall provide for the following information:
 - (1) The name and address of the party making the complaint;
 - (2) The name and address of the landlord;
 - (3) The name and address of the tenant;
 - (4) Whether it is the belief of the party making the complaint that the occupied premises comply with state statutes, municipal ordinances, and regulations relating to health and safety;
 - (5) A statement signed by the complaining party listing the specific reasons for the filing of the complaint.

- (b) Upon the filing of a complaint by a complainant, the executive director shall set a date for a hearing on the complaint which shall not be more than sixty (60) days from the date the complaint was filed except that said date shall not be more than thirty (30) days in the case where a tenant claims harassment or retaliatory action. During the period of time between the filing of a complaint and the date of the hearing, the executive director shall promptly conduct an investigation to determine if reasonable cause exists for the complaint, and shall attempt to resolve such complaint by conference, conciliation, or persuasion. The hearing shall take place as scheduled on all complaints which are not resolved to the satisfaction of the parties prior to the date of the hearing. The hearing shall be open to the public. A hearing may be continued by agreement by all parties or for good cause shown.
- (c) The commission shall render a decision within ten (10) days following a hearing on the complaint.
- (d) The executive director shall ensure that the tenant and the landlord are fully informed of all their rights and responsibilities, procedures and other information relevant to filing a complaint, both orally and in written form, at the time of the complaint, at any informal hearing, and in the public hearing. These materials and oral instructions shall be available in Spanish and English.
- (e) Pending a determination by the fair rent commission, the tenant shall pay to the landlord the last agreed upon rent for the housing accommodation in question.

(Ord. of 12-13-84)

Sec. 12³/₄-6. - Notice of hearing.

The notice of hearing given by the commission shall:

- (1) Be in writing and signed by one (1) of the members of the commission or a designated representative;
- (2) Be served on the landlord personally or by registered mail, return receipt requested, at least ten (10) days prior to the scheduled date of hearing;
- (3) Be given to all tenants of the housing accommodation in question.

(Ord. of 12-13-84)

Sec. 12³/₄-7. - Hearings and procedures.

- (a) Five (5) members of the commission shall constitute a quorum in the exercise of any of the commission's powers and duties, but three (3) or more members of the commission may be appointed by the chairman to serve as a hearing tribunal to conduct hearings in accordance with provisions of this chapter. Any decision, finding, order, determination or other action by a hearing tribunal shall be deemed to be the decision, finding, order, determination or action of the commission.
- (b) The proceedings of the commission in the conduct of its hearings shall be informal.
- (c) All parties to a hearing shall have the right to be represented by counsel, to cross-examine witnesses and to call witnesses and introduce evidence in his own behalf. The testimony taken at such hearing shall be made under oath and a recording thereof shall be made upon request of either party.
- (d) All proceedings shall continue regardless of the fact that a tenant may quit the housing accommodation in question and notwithstanding any attempt, successful or otherwise, to evict said tenant. No sale, assignment or transfer of the housing accommodation in question shall be cause for discontinuing any pending proceeding nor shall it affect the rights, duties and obligations of the commission or the parties thereto.
- (e) Any person who violates any order of rent reduction or rent suspension by demanding, accepting or receiving an amount in excess thereof while said order remains in effect, or who violates the provisions of this chapter prohibiting retaliatory action, or any person who violates any other provision of this chapter or refuses to obey any subpoena, order, or direction of this commission pursuant thereto, shall be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than thirty (30) days, or both, for each such offense. Such offense, should it continue more than one (1) day, shall constitute a new offense for every day it continues to exist. No action shall be taken on any such violation by the prosecuting authorities of the city or the state, except upon written complaint of the commission.
- (f) Any person aggrieved by any decision of the commission may appeal to the Court of Common Pleas for the County of New Haven, such appeal to be taken within ten (10) days after the rendering of the decision in question. Any such appeal shall be considered a privileged matter with respect to the order of trial. Such appeal shall be limited to the question of whether the commission acted arbitrarily, illegally or in abuse of its discretion. Unless otherwise directed by the commission or the court, the filing of an appeal shall not stay any order issued by the commission.

(Ord. of 12-13-84; Ord. of 1-3-89, §§ 1,2)

Sec. 12¾-8. - Standards pertaining to rental charges.

In making determinations as to whether a rental charge is excessive, the commission shall give due consideration to the following:

- (1) Rents charged for the same number of rooms in other housing accommodations within the city;
- (2) The sanitary conditions in the housing accommodations in question;
- (3) The number of bathtubs, or showers, flush water closets, kitchen sinks, and lavatory basins available to the occupant thereof;
- (4) Services, furniture, furnishings and equipment supplied within said housing accommodations by the landlord;
- (5) Size and number of bedrooms and number of whole bathroom accommodations;
- (6) Repairs, including the cost of same, necessary to make such housing accommodation comply with the minimum standards required by the Code of the City of New Haven;
- (7) Compliance of the housing accommodation with the ordinances of the City of New Haven and the General Statutes and regulations of the State of Connecticut relating to health and safety;
- (8) Amount of taxes and overhead expenses of the landlord;
- (9) Income of the tenant and availability of other accommodations for him and his immediate family.

(Ord. of 12-13-84)

Sec. 12¾-9. - Reserved.

Sec. 12¾-10. - Retaliatory eviction.

- (a) In any action for summary process, it shall be an affirmative defense pursuant to Connecticut Public Act 315 of the 1969 General Assembly that the plaintiff brought such action against the tenant solely because of a complaint which was filed with the commission or because the tenant or complainant has taken any other action with reference to the matter covered by this chapter.

(b)

Pursuant to Public Act 83-425 of the Connecticut General Assembly, any tenant who claims that the action of his or her landlord constitutes retaliatory action may file a notice of said claim with the fair rent commission.

- (c) It shall be retaliatory action for a landlord to refuse to renew the lease or other rental agreement of any tenant, to bring an action or proceeding against the tenant to recover possession of the dwelling unit, to demand an increase in rent from the tenant, to decrease the services to which the tenant has previously been entitled or to verbally, physically or sexually harass a tenant because a tenant has filed a complaint with the fair rent commission.
- (d) It shall be an affirmative defense against a claim of retaliatory action when the landlord seeks to recover possession of the dwelling unit if:
 - (1) The tenant is using the dwelling unit for an illegal purpose;
 - (2) There is nonpayment of rent by the tenant;
 - (3) The landlord in good faith seeks to recover the dwelling unit for immediate use as his or her own abode;
 - (4) The conditions complained of were caused by the willful actions of the tenant or another person in the tenant's household or a person on the premises with the tenant's consent;
 - (5) The landlord seeks to recover possession of the dwelling unit on the basis of a notice to terminate a periodic tenancy previous to the tenant's complaint.

(Ord. of 12-13-84)

Sec. 12³/₄-11. - Filing of claim.

- (a) Upon receipt of notice of claim of retaliatory action, the fair rent commission shall inform the landlord and shall investigate the claim. Within fifteen (15) days the commission shall convene a hearing after due notice to the tenant and the landlord for the purpose of determining whether the landlord has engaged in retaliatory action.
- (b) If after such a hearing the fair rent commission finds that the landlord has engaged in retaliatory action in violation of the provisions of section 12³/₄-10(a), the commission pursuant to its powers under Section 148 (b) through (f) of the Connecticut General Statutes and the fair rent ordinance of the City of New Haven shall order the landlord to cease and desist from such actions. This cease and desist order may include the following provisions:

- (1) That the landlord maintain no action against the tenant to recover possession of the dwelling unit;
- (2) That the landlord shall not increase the rent;
- (3) That the landlord restore the services to which the tenant was entitled;
- (4) That the landlord cease and desist all verbal, physical and sexual harassment of the tenant.

(Ord. of 12-13-84)

EXHIBIT C

Fair Rent Complaint Form

Submitted by: Anonymous user

Submitted time: Jul 2, 2021, 2:51:55 PM

Tenant's First and Last Name:

Juana Valle

Property Location:

Lat: 41.30373 Lon: -72.9245

Esri, CGIAR, USGS | E...

Street Address:

27 Maltby Pl. 1st Floor

City:

New Haven

State:

CT

Zip Code:

06513

Apartment Number and Floor:

27 1st Floor

Tenant's Primary Phone Number:

2037733295

Primary Email Address:

juanavalle123@gmail.com

Monthly Gross Income (Income Before Taxes):

1,500

How Long Have You Lived Here?

11 years

Do You Have a Lease?

No

Present Rent Being Paid:

1,000

Date Due:

1st

Has an Increase in Rent Been Proposed?

Yes

How Much of a Rent Increase has Been Proposed?

250

Is Rent Paid to Date?

Yes

Specific Reason for Filing Complaint...

I am writing this complaint because the landlord has taken many repercussions against me. He increased our rent last year during the pandemic by 100\$ more. He then decided to terminate our lease after we called inspection on him in March 2021. He sent the letter saying we had to be out by July 1st, 2021. We told him we know our rights and that he's only taking this action because we called inspection on him and he had to fix some stuff that wasn't safe in our apartment. He has now sent another letter saying we can stay, but we have to pay another 100\$ more and 150\$ for my dog, which he was aware of when we decided to move here 11 years ago. Not only that, but he says that the rent can also increase to 5% every month since we don't have a lease anymore. He also stated that we no longer have rights to the basement or the garage which we have our stuff in. When we first moved here we had an agreement that we'd have access to all these things no problem. He is trying to kick us out asap.

What Remedy Are You Seeking?

The only thing I want is for them to stop raising the rent and let me stay. He has no right to keep raising the rent when there's still things that haven't gotten fixed. I don't plan on moving anytime soon, I have lived here for 11 years and have never stopped paying the rent. I know he's doing this out of spite because I called inspection. This could all have been avoided if he kept his promises and fixed the giant hole in the bathroom that was leaking. I have always communicated with him about the things that needed fixing but he started ignoring my concerns and started intimidating me with the termination of lease and the recent letter he has sent me about increasing my rent each month. I feel like he's discriminating me for being an immigrant, he thinks I don't know my rights as a tenant. I just want him to let me live in peace and stop trying to kick me out. Even with the pandemic I never stopped paying him his rent so I deserve to stay here without being intimidated or harassed.

Number of People Occupying Unit:

7

Number of Bedrooms:

3

Are There Children Living There?

Yes

Any Children 9 Months to 6 Years of Age?

No

Is Apartment Furnished by Landlord?

No

Does Rent Include any of the Following?

Landlord's Name:

Silverio Lucero

Landlord's Address:

500 Strong Street, East Haven, CT 06512

Landlord's Home Phone:

(203)6875643

Landlord's Business Phone:

203) 885-9303

Signature:

Juana Valle

signature-20210702145154314.jpg

Date Complaint was Signed:

Jul 2, 2021

EXHIBIT D



Justin Elicker
Mayor

FAIR RENT COMMISSION
CITY OF NEW HAVEN

165 Church Street 1st Floor, New Haven 06510

Tel: 203.946.8156 Facsimile: 203.946.8587

www.newhavenct.gov



Otis E. Johnson, Jr.
Executive Director

NOTICE OF COMPLAINT

July 27, 2021

**CERTIFIED AND
7020 2450 0000 7442 7923
REGULAR MAIL**

Juana Valle
27 Maltby Place, 1st Floor
New Haven, CT 06513

v.

Lucero Siverio
500 Strong Street
East Haven, CT 06512

RE: FRC Case #1001-22 Juana Valle v. Lucero Siverio

On July 2, 2021, tenant (Complainant) Juana Valle filed a fair rent complaint against landlord (Respondent) Lucero Siverio with the Fair Rent Commission City of New Haven pursuant to the Connecticut General Statutes ("C.G.S.") Section 7-148b and the New Haven Code of Ordinances ("Code") Chapter 12 $\frac{3}{4}$ Fair Rent Practices 12 $\frac{3}{4}$ -4 (a) & (b) based on unsafe and unhealthy housing conditions in addition to a proposed increase in monthly rent.

Please be advised of G.S.C. Sec. 47a-20 and Code Sec. 12 $\frac{3}{4}$ -10, whereby the landlord and any agents are prohibited from retaliating because of the filing of this complaint.

Retaliation includes taking adverse action, including but not limited to initiating any eviction proceeding or reducing services available to the tenant. Unless modified or rescinded by any action of the Fair Rent Commission, this order remains in effect while this case is proceeding. Pending a determination by the Commission, the tenant (Complainant) is required to pay the landlord the last agreed upon rent charge for the housing accommodation until the Commission makes a finding or the parties come to a private resolution. The Fair Rent Commission ("Commission") policy is to encourage negotiation between the tenant and landlord with the Commission Director serving as a mediator in an informal hearing in the Commission offices.

This correspondence serves as notice of a remote Informal Hearing on **Monday, August 9, 2021 at 10:30 A.M.** The remote Informal Hearing will take place by videoconference or by telephone utilizing Zoom. To participate you must provide your email address and telephone number to Field

Should you desire further information, please contact the Commission office at (203) 946-8156.

Sincerely,

A handwritten signature in dark ink, appearing to read 'O. Johnson, Jr.', written over the word 'Sincerely,'.

Otis E. Johnson, Jr.
Executive Director

CC: Members of the Fair Rent Commission Board of Commission
Blake T. Sullivan, Esq., Assistant Corporation Counsel
Ori Spiegel, Esq., Counsel to the Respondent

EXHIBIT E

NOTICE TO QUIT POSSESSION

**TO: SALVADOR JIMENEZ
GERTRUDIZ JIMENEZ
VANESSA JIMENEZ
JUANA VALLE
SANTOS VALLE
JOHN DOE
JANE DOE
27 MALTBY PLACE, FIRST FLOOR
NEW HAVEN, CT 06513**

PLEASE TAKE NOTICE that on or before **NOVEMBER 4, 2021** you are to quit possession, and occupancy of the apartment or dwelling unit located at **27 MALTBY PLACE, FIRST FLOOR, NEW HAVEN, CONNECTICUT**, now occupied by you. The reasons for this notice to quit are:

LAPSE OF TIME- Conn. Gen. Stat. § 47a-23(a)(1)(A);

AS TO JOHN DOE AND JANE DOE: YOUR RIGHT OR PRIVILEGE TO OCCUPY THE PREMISES HAS TERMINATED- Conn. Gen. Stat. § 47a-23(a)(3).

"ANY PAYMENT TENDERED AFTER SERVICE OF THIS NOTICE TO QUIT WILL BE ACCEPTED AS USE AND OCCUPANCY AND AS COSTS OF THE PROCEEDING ONLY WITH A FULL RESERVATION OF RIGHTS TO INSTITUTE AND MAINTAIN A SUMMARY PROCESS ACTION."

Dated at New Haven, Connecticut this 30th day of September, 2021.

BY: _____


Ori D. Spiegel, Esq.
Law Office of Lawrence A. Levinson, P.C.
66 Anderson Street
New Haven, CT 06511
Telephone No.: (203)562-8887
Juris No.: 436664
Attorney for Landlord
Silverio Lucero, LLC

EXHIBIT F

**FAIR RENT COMMISSION
CITY OF NEW HAVEN
RETALIATORY ACTION COMPLAINT FORM**

Tenant's Name: Juana Valle

Address: 27 Maltby Place, First Floor, New Haven, CT 06513

Phone: c/o Attorney Amy Marx, NHLAA 203.903.1229

Email: am@xenhlegal.org

Landlord's Name: Silverio Lucero

Address: 500 Strong Street, East Haven, CT 06512

Phone: c/o Attorney Ori Spiegel - 203.562.0007 x. 311

Fair Rent Complaint File Number & Date: # 1001-22

Public Hearing Date: 5/17/22

Specifics of Retaliatory Complaint:

Ms Valle filed a fair rent complaint on July 2, 2021.
The Fair Rent Commission sent notice of complaint
on July 27, 2021 with order that the landlord take
no adverse action, including filing any eviction proceedings.
The landlord served a notice to quit on September 30, 2021
and has continued to prosecute a summary process
eviction through the present

Date: 5/16/22

Signature: Amy Marx

Amy Marx
Counsel for Ms. Valle

Juris # 419776

EXHIBIT G

Amy Marx

From: Blake T. Sullivan <BTSullivan@newhavenct.gov>
Sent: Tuesday, May 17, 2022 1:40 PM
To: Amy Marx; ori@lawrencelevinsonlaw.com
Cc: Wildaliz Bermudez; Patricia King
Subject: [May Be Spam] Fair Rent Complaint #1001-22, Valle v. Lucero

Importance: Low

[CAUTION] External Sender:

Counsel,

Based on my review of the complainant's retaliation complaint, as well as the housing court docket for the matter of Silvio Lucero LLC v. Juana Valle, et al., Docket No NHH- CV21-6014347-S, I believe the Fair Rent Commission may be without jurisdiction to hear Ms. Valle's complaint with the summary process action set for trial. For this evening's hearing, prior to presenting testimony, please be prepared to discuss the legal basis for the commission's jurisdiction, particularly in light of the prior pending action doctrine and Judge Beach's decision in Mrosek v. MacPherson, 1997 WL 166281 (1997). I will provide each of you 5-10 minutes to present your positions. If there is any other authority you believe to be dispositive of this issue, send it to me for review by 5pm today.

Thank you,
Blake

Blake Sullivan
Assistant Corporation Counsel
Office of the Corporation Counsel
City of New Haven
165 Church Street-4th Floor
New Haven, CT 06510
Office: 203-946-7970
Fax: 203-946-7942
btsullivan@newhavenct.gov

CONFIDENTIALITY NOTICE: This electronic transmission (and/or any attachments accompanying it) contains information from the Office of the Corporation Counsel, City of New Haven, or its attorneys, which may be confidential, privileged or otherwise protected from disclosure. This information is intended to be used solely by the recipient(s) named above. If you are not the intended recipient(s), you are hereby notified that any dissemination, disclosure, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please promptly notify the sender by reply email and destroy the original message.

EXHIBIT H



FAIR RENT COMMISSION
CITY OF NEW HAVEN
165 Church Street 1st Floor, New Haven 06510
Tel: 203.946.8156 Facsimile: 203.946.8587
www.newhavenct.gov



Justin Elicker
Mayor

Wildaliz Bermúdez
Executive Director

May 20, 2022

**NOTICE OF FINDING
PUBLIC HEARING**

**CERTIFIED AND
7020 1810 0002 1552 3799
REGULAR MAIL**

Juana Valle
27 Maltby Place 1st Floor
New Haven, CT, 06513

v.

Silverio Lucero
500 Strong Street
East Haven, CT 06512

RE: FRC Case #1001-22 Juana Valle v. Silverio Lucero

To the Parties Concerned:

On July 2, 2021, tenant (Complainant) Juana Valle filed a fair rent complaint against landlord (Respondent) Silverio Lucero with the City of New Haven Fair Rent Commission pursuant to the Connecticut General Statutes ("C.G.S.") Section 7-148b and the New Haven Code of Ordinances ("Code") Chapter 12 ¾-4, based on unsafe and unhealthy housing conditions in addition to a proposed increase in monthly rent.

The Fair Rent Commission Board's determination at the May 17, 2022, Public Hearing for this case is as follows:

- A. On July 2, 2021, tenant (Complainant) Juana Valle, filed a fair rent complaint against landlord (Respondent) Silverio Lucero, based on unsafe and unhealthy housing conditions in addition to a proposed increase in monthly rent.
- B. The Commission has jurisdiction in this case based on criteria set forth by C.G.S. 7-148b and the New Haven Municipal Code of General Ordinances 12 ¾ -8.
- C. Accordingly, the Commission decides this case by consideration of the criteria set forth under C.G.S. Section 7-148c and the Code Sec. 12 ¾-8 in determination as to whether the rent is harsh and unconscionable.
- D. Notice of the Public Hearing was issued on May 9, 2022, by Certified and Regular Mail.
- E. **The Commission conducted a Public Hearing on Tuesday, May 17, 2022, and ruled on the Case #1001-22 as follows:**
 - 1. The Board of Commissioners voted unanimously to dismiss the retaliation complaint given the recommendation by the City of New Haven's Assistant Corporation Counsel. Furthermore, the Commission found it was without jurisdiction on the retaliation complaint in this case, as the summary process action is set for trial.
 - 2. After consideration of all of the testimony and evidence presented, The Board of Commissioners voted unanimously to set monthly rent to \$1,100 per month, with an additional one-time \$150 pet fee; with the pet fee payable in three (3) payments.
 - 3. Such order shall be effective for one year from its date following the provisions set forth in the New Haven Municipal Code of General Ordinances Section 12 ¾-4.
 - 4. The Board of Commissioners has thereby effectively closed the case as of the date of the Commissioners order on May 17, 2022.
- F. The Commission Notice of Finding for Public Hearing for this case was emailed as well as sent by Certified and Regular mail to all parties on May 20, 2022.

Please be reminded of Sec. 12 ¾-4 (Powers of the Commission) 12 ¾-4 (7) states such order of the (of the Commission) shall be effective for one year from its date thereof. In addition, **Sec 12 ¾-7(f) (Hearings and Procedures)**, "Any person aggrieved by any decision of the Commission may appeal to the [State of Connecticut Superior Court Housing Session for the Judicial District of New Haven, 121 Elm Street, New Haven, CT], such appeal to be taken within ten (10) days after the rendering of the decision in question." Any such appeal shall be considered a privileged matter with respect to the order of trial. Such appeals shall be limited to the question of whether the Commission acted arbitrarily, illegally, or in abuse of its discretion. Unless otherwise directed by the court, the filing of an appeal shall not stay any order issued by the Commission.

Sincerely,



Wildaliz Bermúdez

Executive Director

CC: Members of the Board of Commissioners
Blake T. Sullivan, Esq., Assistant Corporation Counsel
Amy Marx, Esq., Counsel for the Complainant
Ori Spiegel, Esq., Counsel for the Respondent
File

EXHIBIT I

1983 WL 187590

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Superior Court of Connecticut, Housing Session,
Judicial District of Stamford-Norwalk.

GREGORY HALL APARTMENTS

v.

Ethel FLICKER.

No. SPNO8303-00637.

May 26, 1983.

*MEMORANDUM OF DECISION ON MOTION FOR
USE AND OCCUPANCY*

DRISCOLL, Judge.

*1 In this matter the plaintiff has moved for use and occupancy payments. The defendant put on no evidence, but argued that the Court could not make a determination of use and occupancy contrary to what the Fair Rent Commission in Stamford had determined to be "a fair rent" for the premises in question and that matter is before this Court on appeal from the determination.

The plaintiff offered the testimony of a real estate broker who testified that the rent for other similar apartments in similar locations in Stamford was \$550.00 a month. The agent had not been in the apartment in question but had been in one of the same size and location in the same building and was basing his conclusions on that. No evidence was offered as to the rent that had been charged except for the reference to the appeal from the Fair Rent Commission action.

It would seem to the Court inappropriate for the Court to determine that use and occupancy payments should be greater than the rent previously paid by the tenant and agreed to by her. In this case the matter is complicated by

the fact that there apparently was a rent paid by the defendant which was rejected by the landlord because it did not include an increase which the landlord had imposed and, further, that the tenant, in rejecting the increase, had appealed to the Fair Rent Commission to have the rent determined to be excessive because of the increase.

The rent which the tenant paid appears to have been \$350.00 (See exhibits attached to Request for Admission). The landlord is apparently asking \$416.00. The Fair Rent Commission determined that the fair rent was \$350.00.

While it may be true that making a determination as to the rental value of the premises for use and occupancy during the pendency of this action on its face appears to be a decision on the merits of the appeal from the Fair Rent Commission, actually it is not because the function of the Court on the appeal from the Fair Rent Commission is to determine whether the Fair Rent Commission acted arbitrarily without sufficient evidence or failed to carry out its function properly as delineated in the statutes. The Court does not see its function as substituting its judgment for that of the Commission, but merely to determine whether the Commission acted within the scope of its authority and whether its conclusions were legally supported by the evidence or whether it acted arbitrarily, illegally or so unreasonably as to have abused its discretion.

Furthermore, the issue before the Court is a rather narrow one, to wit, how much the landlord should receive and the tenant should pay while the action is pending and the tenant is remaining in possession of the premises. Surely it cannot be argued that the landlord is entitled to no payment. On the other hand, I think it would unfair for the Court in this kind of preliminary determination to make a finding which would result in the tenant having to pay an increase in her rent, particularly when she has protested that increase to the appropriate body and has had her protest upheld.

*2 The Court finds that the fair value of the premises during the pendency of this action is \$350.00 a month and the plaintiff is ordered to pay that amount into the court during the pendency of this action; the first payment should be due June 1st.

All Citations

Not Reported in A.2d, 1983 WL 187590

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EXHIBIT J

2010 WL 2397031

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Superior Court of Connecticut,
Housing Session,
Judicial District of New Haven.

SOUNDVIEW PROPERTY RENEWAL,
LLC, et al.

v.

FAIR RENT COMMISSION OF the CITY
OF NEW HAVEN.

No. CVNH 0904-13627.

|
March 18, 2010.

Opinion

JAMES W. ABRAMS, Judge.

*1 This matter is a landlord's appeal of a March 18th, 2009 Order of the Fair Rent Commission of the City of New Haven ("FRC") in the matter of *Elba Santos v. Soundview Property Renewal LLC and agents Susan & Ed Goodwin* (FRC Case # 1020-09). "Any person aggrieved by any order of the commission may appeal to the superior court for the judicial district in which the town, city or borough is located." Connecticut General Statutes § 7-148c.

The FRC ruled that a proposed rent increase from \$600 per month to \$725 per month on a unit owned by appellants at 133 Clay Street, New Haven, Connecticut was unconscionable and ordered that the increase be limited to \$50.00 per month. The FRC stated at the conclusion of the hearing that its ruling was supported by the small size of the apartment and its consideration of the surrounding neighborhood. The Record also reveals that the FRC considered the tenants' income, the fact that the tenants had not damaged the property, and the fact that the premises complied with applicable health and safety standards. The landlord appeals the ruling, arguing that the FRC acted "arbitrarily and illegally and abused its discretion."

Section 7-148c contains thirteen factors which a fair rent commission may consider in considering rent increases:

"In determining whether a rental charge or a proposed increase in a rental charge is so excessive, with due regard to all the circumstances, as to be harsh and unconscionable, a fair rent commission shall consider such of the following circumstances as are applicable to the type of accommodation: (1) The rents charged for the same number of rooms in other housing accommodations in the same and in other areas of the municipality; (2) the sanitary conditions existing in the housing accommodations in question; (3) the number of bathtubs or showers, flush water closets, kitchen sinks and lavatory basins available to the occupants thereof; (4) services, furniture, furnishings and equipment supplied therein; (5) the size and number of bedrooms contained therein; (6) repairs necessary to make such accommodations reasonably livable for the occupants accommodated therein; (7) the amount of taxes and overhead expenses, including debt service, thereof; (8) whether the accommodations are in compliance with the ordinances of the municipality and the general statutes relating to health and safety; (9) the income of the petitioner and the availability of accommodations; (10) the availability of utilities; (11) damages done to the premises by the tenant, caused by other than ordinary wear and tear; (12) the amount and frequency of increases in rental charges; (13) whether, and the extent to which, the income from an increase in rental charges has been or will be reinvested in improvements to the accommodations."

The question of whether the court would have reached the same conclusion as the FRC is irrelevant to the disposition of this appeal: "The court's ultimate duty is only to decide whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. *Robinson v. Unemployment Security Board of Review*, 181 Conn. 1, 5 (1980). It is not the function of the court to retry the case or to substitute its judgment for that of the agency. *Madow v. Muzio*, 176 Conn. 374, 376 (1978). The ultimate issue is whether there is substantial evidence in the record to support the decision of the commission. *Jaser v. Zoning Board of Appeals*, 43 Conn.App. 545, 548 (1996). " *Ninth Square Project Limited Partnership v. Fair Rent Commission of the City of New Haven*, No. CVNH-03-11535, Judicial District of New Haven Housing Session at New Haven (December 2, 2004, Pinkus, J.) The substantial evidence standard allows the court to chart a course somewhere between de novo review of the FRC's action and complete abstention to its arbitrary whims. *Martland v. Zoning Commission of Woodbury*, 114 Conn.App. 655, 663 (2009).

*2 Appellant argues that the FRC was required to

consider every one of the thirteen factors contained in § 7-148c or state why it didn't apply in this matter. Such a strict requirement does not appear to have support in the law: "[T]he Commission shall consider any or all of the thirteen circumstances outlined in reaching the decision." *East Wintonbury Hill v. Bloomfield Fair Rent Commission*, Docket No. CV 6257, Judicial District of Hartford Housing Session (March 26, 2002, Crawford, J.). Appellant also claims that the FRC misinterpreted some of the evidence regarding the size of the unit in reaching its conclusions. A review of the Record indicates that while the FRC may have been less than methodical in detailing the reasons behind its decision to limit the rent increase to \$50.00 per month, it did consider a number of the statutory factors in reaching its conclusion. In addition, while the Record reveals some freewheeling discussion and divergent views regarding the size of the unit, it appears that the FRC ultimately possessed an accurate picture of the situation by the time it formulated its ruling.

The court is wary of requiring administrative boards and commissions to operate with technical precision, particularly in view of the fact most are made up of citizen volunteers who serve without compensation. While administrative decisions should not be motivated by unrelated personal vendettas, in the absence of a clear Record, it is perfectly appropriate for the court to review

the Record in an attempt to infer the reasons behind the decision at issue. "As long as a search of the record reveals the basis for the agency's decision consistent with the substantial evidence standard ... then the reviewing court must infer that the [agency's decision should be sustained].... Courts must be scrupulous not to hamper the legitimate activities of civic administrative boards by indulging in a microscopic search for technical infirmities in their actions.... This cautionary advice is especially apt whenever the court is reviewing a decision of a local commission composed of laypersons." (Citations omitted; internal quotation marks omitted.) *Samperi v. Inland Wetlands Agency*, 226 Conn. 579, 595-96 (2003).

Based on the foregoing, the court finds that the FRC's decision to limit the rent increase to \$50.00 is supported by substantial evidence in the Record and, as a result, the decision was neither arbitrary, illegal nor an abuse of the FRC's discretion. The appeal is dismissed.

All Citations

Not Reported in A.2d, 2010 WL 2397031, 50 Conn. L. Rptr. 142

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EXHIBIT K

asserted, enforced, prosecuted or inflicted as fully and to the same extent as if this act had not been passed.

SEC. 14. Sections 33-243 to 33-264, inclusive, of the general statutes are repealed.

SUBSTITUTE FOR SENATE BILL NO. 155.

PUBLIC ACT NO. 315

AN ACT CONCERNING RETALIATORY EVICTIONS.

In any action for summary process under chapter 922 of the general statutes it shall be an affirmative defense that the plaintiff brought such action solely because the defendant attempted to remedy, by lawful means, including contacting officials of the state or of any town, city, borough or public agency, any condition constituting a violation of any of the provisions of chapter 352 of the general statutes or of the housing or health ordinances of the municipality wherein the premises which are the subject of the complaint lie. The obligation on the part of the defendant to pay rent or the reasonable value of the use and occupancy of the premises which are the subject of any such action shall not be abrogated or diminished by any provision of this act.

MODIFIED HOUSE BILL NO. 5902.

PUBLIC ACT NO. 316

AN ACT PROVIDING FOR LICENSES FOR DENTAL
SCHOOL FACULTY.

SECTION 1. Section 20-120 of the general statutes is repealed and the following is substituted in lieu thereof: Any graduate of a recognized dental college may practice dentistry in a clinic for a period not exceeding six months, provided he shall obtain the written consent and approval of the dental commission. *A full-time faculty member of a school of dentistry in this state who is licensed in another state may be granted a provisional license upon consent and approval of the dental commission which provisional license shall be in effect dur-*

EXHIBIT L

(b) The department of mental health shall enter into long-term contracts for the purchase of steam or electricity from such facility which is necessary for the operation of the hospitals. The department shall not be liable for any energy costs from such a facility in addition to the energy costs it would have incurred without the facility.

Sec. 2. This act shall take effect July 1, 1983.

Substitute House Bill No. 6921

PUBLIC ACT NO. 83-425

AN ACT CONCERNING THE POWERS OF FAIR RENT COMMISSIONS AS TO RETALIATORY EVICTIONS.

Section 7-148d of the general statutes is repealed and the following is substituted in lieu thereof:

(a) If a commission determines, after a hearing, that the rental charge or proposed increase in the rental charge for any housing accommodation is so excessive, based on the standards and criteria set forth in section 7-148c, as to be harsh and unconscionable, it may order that the rent be limited to such an amount as it determines to be fair and equitable. If a commission determines, after a hearing, that the housing accommodation in question fails to comply with any municipal ordinance or state statute or regulation relating to health and safety, it may order the suspension of further payment of rent by the tenant until such time as the landlord makes the necessary changes, repairs or installations so as to bring such housing accommodation into compliance with such ordinance, statute or regulation. The rent during said period shall be paid to the commission to be held in escrow subject to ordinances or provisions adopted by the town, city or borough.

(b) IF THE COMMISSION DETERMINES, AFTER A HEARING, THAT A LANDLORD HAS RETALIATED IN ANY MANNER AGAINST A TENANT BECAUSE THE TENANT HAS COMPLAINED TO THE COMMISSION, THE COMMISSION MAY ORDER THE LANDLORD TO CEASE AND DESIST FROM SUCH CONDUCT.

Substitute House Bill No. 7088

PUBLIC ACT NO. 83-426

AN ACT CONCERNING THE LICENSING OF SOLAR CONTRACTORS.

Section 1. Section 20-330 of the general statutes is repealed and the following is substituted in lieu thereof:

As used in this chapter:

(1) "Contractor" means any person regularly offering to the general public services of his employees or himself in the field of electrical or plumbing and piping, solar, heating, piping and cooling or elevator installation, repair and maintenance work as hereinafter defined;

(2) "Electrical work" means the installation, erection, maintenance, alteration or repair of any wire, cable, conduit, busway, raceway, support, insulator, conductor, appliance, apparatus, fixture or equipment which generates, transforms, transmits or uses electrical energy for light, heat, power or other purposes;

(3) "Plumbing and piping work" means the installation, repair, replacement, alteration or maintenance of gas, water and associated fixtures, laboratory equipment, sanitary equipment, other than subsurface sewage disposal systems, fire prevention apparatus, all water systems for human usage, sewage treatment facilities and all associated fittings within a building and shall include lateral storm and sanitary lines from buildings to the mains, swimming pools and pumping equipment, but on and after [April] JULY 1, 1984, shall not include solar work, except for the repair of those portions of a solar hot water heating system which include the basic domestic hot water tank and the tie-in to the potable water system;

EXHIBIT M

December 1, 1969

Appropriations. Favorable. Order. De Assistance by City of New Haven for Construction of Sewers in Long Wharf Redevelopment and Renewal Area (Community Health Care Center Plan, Inc.).

The favorable report from the Committee on Appropriations, made after public hearing, recommending passage of the following proposed order, was read for the first time and unanimous consent for immediate action thereon having been granted, it was voted, viva voce, on motion of Alderman Ambrogio, duly seconded, that said report be accepted and proposed order be passed, and it was so declared by the Chair:

ORDER OF THE BOARD OF ALDERMEN OF THE CITY OF NEW HAVEN APPROVING THE GRANTING OF ASSISTANCE TO THE COMMUNITY HEALTH CARE CENTER PLAN, INC., FOR THE CONSTRUCTION OF SEWERS ON REUSE PARCEL L IN THE LONG WHARF REDEVELOPMENT AREA

WHEREAS, by the terms of the Land Disposition Agreement among the City of New Haven, the New Haven Redevelopment Agency and the Community Health Care Center Plan, Inc., with respect to Reuse Parcel L in the Long Wharf Redevelopment Area, approved by the Board of Aldermen on August 4, 1969, the Community Health Care Center Plan, Inc., agreed to purchase a portion of Reuse Parcel L and to be responsible for the construction of the underground sewer system to replace an existing drainage ditch on the property; and

WHEREAS, the Community Health Care Center Plan, Inc., is now informed that the cost of such sewers will be greater than had been originally estimated; and

WHEREAS, the Community Health Care Center Plan, Inc. now seeks additional assistance from the City;

December 1, 1969

Now, therefore, be it resolved by the Board of Aldermen that the City of New Haven shall bear such portion of the total cost of the construction of such sewers as may exceed \$275,000; provided, however, that the City of New Haven shall not be obligated to spend more than it has available for such purposes in the Long Wharf Redevelopment Area, or \$250,000, whichever is lesser.

Claims. Favorable.

Claims. Unfavorable.

Legislation. Favorable. De Establishment of a Fair Rent Commission for the City of New Haven.

CONCERNING THE ESTABLISHMENT OF A FAIR COMMISSION FOR THE CITY OF NEW HAVEN

BE IT ORDAINED BY THE CITY OF NEW HAVEN THAT:

Section 1. PURPOSE: Pursuant to and in conformity with Public Act No. 274 of the 1969 General Assembly, that the Commission on Equal Opportunity be designated as the Commission for the purpose of controlling and eliminating excessive rental charges on residential property within the City of New Haven.

Section 2. DEFINITIONS: Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

- (1) "Commission" shall mean the Commission on Equal Opportunity of the City of New Haven, Connecticut.
- (2) "Person" shall mean any individual, firm, company, association, corporation or groups.

(3) **"Housing Accommodation"** shall mean any building or structure, wholly or in part, containing living quarters occupied or fairly intended for occupancy as a place of residence, with any land or buildings appurtenant thereto and any services, furniture and facilities supplied in connection therewith except:

(a) A hospital, convent, monastery, asylum, public institution or college or school dormitory or any such accommodation which is operated or used exclusively for charitable or educational purposes.

(4) **"Rent"** or **"Rental Charges"** shall mean any consideration, monetary or otherwise, including any bonus, benefit, or gratuity, demanded or received for the use or occupancy of any housing accommodation.

(5) **"Tenant"** shall mean any person who leases or rents, whether by written oral lease or who in any other legal way occupies any housing accommodation, as a residence for himself and/or his immediate family.

(6) **"Landlord"** shall mean any person who leases, subleases, rents, permits or suffers the occupancy of any housing accommodation, including a person who manages a housing accommodation owned by someone else.

Section 3. STAFF. The Commission may employ and staff such consultants as are necessary for the Commission to carry out its responsibilities under this ordinance. Said Executive Director and any additional employees shall be entitled to receive reasonable compensation for their services. Upon request, assistance from other municipal agencies, department, and commissions, shall be reasonably available to the Commission.

Section 4. POWERS. The Commission shall have the following powers:

(1) To make such studies and investigations into rentals charged for housing accommodations within the City of New Haven as it deems appropriate to carry out its responsibilities hereunder.

(2) To receive complaints, inquiries, and other communications concerning alleged excessive rental charges in housing accommodations within said city.

(3) To conduct hearings, either on its own motion or on complaints or requests for investigation submitted to it by any interested person.

(4) To administer oaths.

(5) To subpoena witnesses and compel their attendance at said hearings and to compel production of any books and documents relating to any matter under investigation or question.

(6) To determine, after a hearing, whether or not the rent for any housing accommodation is so excessive based on the standards and criteria of this ordinance, as to be harsh and unconscionable.

(7) To order a reduction of any excessive rent to an amount the Commission considers fair and equitable retroactive to the date of filing of the complaint.

(8) To determine, after a hearing, whether or not a housing accommodations fails to comply with state statutes, municipal ordinances, and regulations relating to health and safety.

(9) To order the suspension of further payment of rent by the tenant to the landlord and order the deposit of said rent in an escrow account to be administered by the Commission, as hereinafter described, until such time as the

landlord makes necessary changes, repairs, alterations or installations so as to bring the housing accommodation into compliance with state statutes, municipal ordinances or regulations relating to health and safety, if the Commission finds that the housing accommodation in question fails to comply with said statutes, ordinances or regulations.

(10) To use the rents paid into escrow to bring the housing accommodation in question into compliance with state statutes, municipal ordinances or regulations relating to health and safety as hereinafter provided.

(11) To do all things now or hereafter authorized by Public Act 274 of the 1969 General Assembly as the same now reads or may be amended from time to time.

(12) To adopt rules and regulations for the carrying on of its functions, including rules and regulations for the conduct of its hearings.

(13) To continue, review, modify, terminate or suspend all its orders and decisions.

Section 5. COMPLAINTS

(1) The Commission shall prepare and make available complaint forms for use by persons desiring to file complaints. The complaint forms shall provide for the following information:

- (a) the name and address of the party making the complaint
- (b) the name and address of the landlord
- (c) the name and address of the tenant

(d) whether it is the belief of the party making the complaint that the occupied premises comply with state statutes, municipal ordinances, and regulations relating to health and safety

(e) a statement signed by the complaining party listing the specific reasons for the filing of the complaint.

(2) The Commission staff shall, within seven (7) days of receiving a complaint conduct preliminary investigation into the complaint, and report the results of same to the Commission. The Commission shall hold a hearing within twenty-one (21) days after such complaint. Such hearings shall be open to the public. A hearing may be continued by agreement of all parties or for good cause shown.

(3) The Commission shall render a decision within ten (10) days following a hearing on the complaint.

Section 6. NOTICE OF HEARING. The Notice of Hearing given by the Commission shall:

(1) Be in writing and signed by one of the members of the Commission or a designated representative;

(2) Be served on the landlord personally or by registered mail, return receipt requested, at least ten (10) days prior to the scheduled date of hearing;

(3) Be given to all tenants of the housing accommodation in question.

Section 7. HEARINGS AND PROCEDURES.

- (1) A quorum for a Commission meeting shall be four
- (4) members of the Commission.

(2) The proceedings of the Commission in the conduct of its hearings shall be informal.

(3) All parties to a hearing shall have the right to be represented by counsel, to cross-examine witnesses and to call witnesses and introduce evidence in his own behalf. The testimony taken at such hearing shall be under oath and a stenographic record thereof shall be made upon request of either party.

(4) All proceedings shall continue regardless of the fact that a tenant may quit the housing accommodation in question and notwithstanding any attempt, successful or otherwise, to evict said tenant. No sale, assignment or transfer of the housing accommodation in question shall be cause for discontinuing any pending proceeding nor shall it affect the rights, duties and obligations of the Commission or the parties thereto.

(4a) Any person who violates any order of rent reduction or rent suspension by demanding, accepting or receiving an amount in excess thereof while said order remains in effect, or any person who violates any other provision of this ordinance or refuses to obey any subpoena, order or direction of this Commission pursuant thereto, shall be fined not more than One Hundred (\$100.00) Dollars or imprisoned for not more than thirty (30) days, or both, for each such offense. Such offense, should it continue more than one (1) day, shall constitute a new offense for every day it continues to exist. No action shall be taken on any such violation by the prosecuting authorities of the city or the state, except upon written complaint of the Commission.

(5) Any person aggrieved by any decision of the Commission may appeal to the Court of Common Pleas for the County of New Haven, such appeal to be taken within ten (10) days after the rendering of the decision in question. Any such appeal shall be considered a privilege matter with

respect to the order of trial. Such appeal shall be limited to the question of whether the Commission acted arbitrarily, illegally or in abuse of its discretion. Unless otherwise directed by the Commission or the Court, the filing of an appeal shall not stay any order issued by the Commission.

Section 8. STANDARDS. In making determinations as to whether a rental charge is excessive, the Commission shall give due consideration to the following:

(1) Rents charged for the same number of rooms in other housing accommodations within the city.

(2) The sanitary conditions in the housing accommodations in question.

(3) The number of bathtubs, or showers, flush water closets, kitchen sinks, and lavatory basins available to the occupants thereof.

(4) Services, furniture, furnishings and equipment supplied within said housing accommodations by the landlord.

(5) Size and number of bedrooms and number of whole bathroom accommodations.

(6) Repairs, including the cost of same, necessary to make such housing accommodation comply with the minimum standards required by the Code of the City of New Haven.

(7) Compliance of the housing accommodation with the ordinances of the City of New Haven and the General Statutes and regulations of the State of Connecticut relating to health and safety.

(8) Amount of taxes and overhead expenses of the landlord.

(9) Income of the tenant and availability of other accommodations for him and his immediate family.

Section 9. RENTAL PAYMENTS TO THE COMMISSION.

(1) The Commission shall establish an escrow account with one or more local banks or financial institutions into which it shall deposit all rent or other funds paid to it by tenants.

(2) If the Commission determines after a hearing that the housing accommodation fails to comply with any state statute, municipal ordinance, or regulation relating to health and safety, the Commission may order the tenant to pay a reasonable rent to the Commission and hold said rent in an escrow account, as hereinbefore provided; until the landlord makes whatever repairs or changes are required to bring the housing accommodation in question into compliance with the statutes, ordinances, or regulations.

(3) At such time as the Commission finds that property is brought to the required standard as a result of the landlord making the necessary changes, alterations, repairs or installations, the amount then held in escrow shall be returned to the landlord.

(4) In the event that the landlord has not begun to take remedial action pursuant to an order issued by the Commission within a reasonable time not to exceed thirty (30) days, the Commission may use the rents paid into the escrow fund to make the required changes, alterations, repairs or installations.

(5) The expenses and disbursements incurred by the Commission in performing such repairs, changes or installations which cannot be fully paid for by the existing escrow funds, shall constitute a lien on the property to which the order relates until such expenses and disbursements are paid in full.

(6) The Commission may establish a repair fund and draw upon such funds as may be appropriated for such purposes to effect the provisions of this section as hereinabove set forth.

Section 10. RETALIATORY EVICTION.

In any action for summary process, it shall be an affirmative defense pursuant to Connecticut Public Act 315 of the 1969 General Assembly that the plaintiff brought such action against the tenant solely because of a complaint which was filed with the Commission or because the tenant or complainant has taken any other action with reference to the matter covered by this ordinance.

Section 11. SEVERABILITY

The provisions of this ordinance are severable, and if any provision of this ordinance or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the ordinance or the application of such provision to any persons or circumstances other than to which it is held invalid shall not be affected thereby.

Section 12. EFFECTIVE DATE.

This ordinance shall take effect from the date of its enactment.

EXHIBIT N

1997 WL 166281

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.Superior Court of Connecticut, Judicial
District of Hartford/New Britain.

George H. MROSEK, et al.

v.

Mark MACPHERSON, et al.

No. SPH89843.

|

April 7, 1997.

RULING ON MOTION FOR STAY

BEACH, Judge.

*1 This case is part of a continuing saga of disagreements concerning the plaintiff, several tenants, and the Manchester **Fair Rent Commission**. The framework for the dispute, stated in undoubtedly oversimplified terms for the purpose of brevity, is that several tenants, including the defendants in this action, filed complaints with the **Fair Rent Commission** in May, 1996. In July, 1996, the commission issued a conditional order to the effect that until certain repairs were made, rent would be reduced by \$50/month as to each complaining unit. The landlord appealed, and the this court stayed the order to the extent that the \$50/month deductions were to be deposited with the plaintiff's attorney. That **appeal** should be heard on the merits within several months.

In the meantime, the plaintiff has instituted summary process actions against several of the tenants who complained to the commission. In the instant case, the landlord caused a notice to quit to be served on November 18, 1996, for lapse of time. The complaint, alleging lapse of an oral month to month lease, was served on December 7, 1996. The defendants in this case, along with, apparently, several others, complained to the **Fair Rent Commission**, which on December 13, 1996, issued a "cease and desist" order against the plaintiff, apparently on the ground that the contemplated eviction was brought in retaliation for the prior complaint to the commission. The plaintiff has appealed from that order to this court; a briefing schedule has not yet been established as to that **appeal**. No

one has specifically sought to enforce the commission's cease and desist order.

The defendants are requesting the court to stay the pending summary process action. At oral argument, defense counsel did not rely solely or specifically on the commission's cease and desist order, but rather stressed the more generalized principles regarding stays as expressed in cases such as *Griffin Hospital v. Commission on Hospitals*, 196 Conn. 451 (1985). *Griffin*, of course, concerns the factors to be considered in the decision whether to stay an order of an administrative agency pending appeal. The context is, then, not precisely on point with the question of whether to stay an independent action while a related agency order is on appeal.

The defendants quite correctly do not seem to be arguing that a municipal administrative agency has the power to stay a pending Superior Court case. Agencies in general have "only such powers as are expressly granted or necessarily implied to enable it to carry into effect the objects and purposes of [their] creation." *Monroe v. Middlebury Conservation Commission*, 187 Conn. 476, 483-85 (1982). Any notion to the contrary would raise serious difficulties with the doctrine of the separation of powers.

The question, then, is whether the action should be stayed in the exercise of discretion. For the resolution of this question, one examines the overall statutory scheme. The goal of statutory construction is to give effect to the intent of the legislature. *Vaillancourt v. New Britain Machine/Litton*, 224 Conn. 382, 390 (1993). The actual language used is the best means to determine the intent; *Stein v. Hillebrand*, 240 Conn. 35, 40 (1997); if there is an ambiguity, guidance may be found in the context, history and existing legislation. *State v. McVeigh*, 224 Conn. 593, 607 (1993). When it passes statutes, the legislature is presumed to be aware of all existing statutes and to intend to create a harmonious whole. *Berger v. Tonken*, 192 Conn. 581, 589 (1984); *Stein v. Hillebrand*, *supra*, 42-43.

*2 Section 7-184d(b) allows the commission to determine, after a hearing, that a particular action of a landlord is retaliatory and may order him to cease and desist from such conduct. No specific definitions of what constitutes retaliation are provided. Title 47a of the General Statutes, on the other hand, which specifically governs summary process actions, also provides for a defense of retaliatory eviction, and prescribes with some specificity what is retaliatory for purposes of such a defense. See, e.g., §§47a-33, 47a-20 and 47a-20a of the General Statutes. If the statutes are to be read as

a harmonious and consistent whole, it seems that the specific statutes defining retaliation in the context of summary process and housing law ought to govern exclusively the eviction process. If a commission makes a finding of retaliation which is ultimately upheld and enforced, an enforcement method independent of summary process is available. See §7-148f of the General Statutes.

I find, then, that the legislature has carefully delineated those situations which constitute “retaliation” for purposes of defenses to summary process actions and that an independent method exists to enforce findings of “retaliation” made by the commission. I decline, then, to stay this action pending

resolution of the administrative activity, for to grant what amounts to a more or less indefinite stay would, in the specific context of this case, effectively be creating another defense. The defense of retaliation may, of course, be urged by the defendants in this case, and I am expressing no opinion at this point as to the merits of the defense. The motion for stay is denied.

All Citations

Not Reported in A.2d, 1997 WL 166281, 19 Conn. L. Rptr. 524

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